IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/12/2003

CORAM

THE HON'BLE MR.JUSTICE V.KANAGARAJ

Criminal Original Petition No.23395 of 2003

K.Samisundara Raj ... Petitioner

-Vs-

1.The Inspector of Police,
Guindy Police Station,
Guindy,
Chennai.

2. Chitrarasu
No.19, 3rd P.P.Amman Koil Street,
Basin Bridge,
Chennai 21. ... Respondents

Petition filed under Section 482 of the Code of Criminal Procedure
praying for as stated below.

For Petitioner : Mr.S.Doraisamy

For respondent No.1 : Mr.V.Jayaprakash Narayanan
Govt.Advocate

For Respondent No.2 : Mr.M.L.Ramesh

:O R D E R

The petitioner, praying to direct the first respondent to collect the deed of undertaking and the cheques of the State Bank of India, Ashok Nagar Branch dated 16.7.2003, 16.8.2003, 16.9.2003, 16.10.2003 and 16.11.2003 from the second respondent and return the same to him, has come forward to file the above criminal original petition.

2. The averments of the petition are that the petitioner is the retired PWD Engineer; that his son viz., Kannan, after his marriage in 1 999, is living separately, doing some business independently with whom the petitioner does not have any connection; that he suffered heart attack and he is quietly leading a retired life without indulging himself in any activity, much less any business; that a complaint seems to have been lodged by the second respondent and 3 others against his son Kannan, for his son having

allegedly borrowed a sum of Rs.4,94,000/- and failed to return the same, thereby cheating the complainants, but the petitioner was not aware of the same and while so, the first respondent, the Inspector of Police on 27.4.2003 took him to the Guindy Police Station and keeping him under coercion and threat that he would be arrested and remanded to jail, compelled him to issue post dated cheques five in number of the State Bank of India, Ashok Nagar Branch in favour of the complainants for the amounts claimed by them, the first four cheques each for a sum of Rs.1,00,000/- and the last cheque for Rs.94,000/- respectively dated 16.7.2003, 16.8.2003, 16.9.2003, 16.10.2003 and 16.11.2003.

3. The petitioner would further submit that thereafter a deed of undertaking was also prepared on the directions of the first respondent in which it was written that as and when the petitioner sells his house, he would honour two cheques dated 16.7.2003 and 16.8.2003 and after selling the second house, the third and fourth cheques would be honoured and for the 5th cheque, he would pay a cash on 10.11.2003 and imposing such conditions, the above cheques were handed over to the second respondent through the first respondent further making him to sign the deed of undertaking along with the complainants; that because of the threat and coercion and being afraid of the police harassment, he gave cheques to the first respondent police and executed the deed of undertaking; that in fact, he did not owe any amount to the complainants, but by sheer misuse of office and power, the first respondent seized all the five cheques from the petitioner and handed over to the second respondent. On such allegations, the petitioner has come forward to file the above Criminal original Petition seeking not only the seizure of the cheques, but also the documents from the possession of the second respondent thereby directing the first respondent to do the same, besides returning them same in favour of the petitioner.

4. In the additional affidavit filed by the petitioner dated 3.9.20 03, the petitioner would furnish the cheque Numbers as 772866, 77286 7, 772868, 772869 and 772871 of the State Bank of India, Ashok Nagar Branch, Chennai.

5. In the Counter filed by the first respondent, besides generally denying the allegations of the petition, it would further be alleged that the complaint was addressed to the Commissioner of Police, Egmore, Chennai, alleging that during 1999, the son of the petitioner received a sum of Rs.5,19,000/- from one Vinayagamoorthy and 3 others promising to procure a job in the Port Trust, Madras and accordingly, the complainant waited for several months, but the petitioner's son failed to honour his promise; that on 24.3.2000, the said Vinayagamoorthy and others approached the petitioner's son; that he told them that they could not get jobs, but agreed to return the money and issued them a cheque dated 15.5.2000 bearing No.774474 drawn on City Bank for Rs.1,74,000/- and another cheque dated 29.5.2000 bearing No.575514 drawn on City Bank for a sum of Rs.2,00,000/-; that after 15 days from the date of issuance of the above said cheques, the said Kannan requested the complainants not to deposit the cheques and promised to return in cash and thereafter they were not able to trace the said Kannan and at last on 18.1.2002, the complainant found the whereabouts of the said Kannan and his

father, who is the petitioner herein, who promised to return the money on or before 17.4.2002 by way of written document and if they fail to return the same, the said Vinayagamoorthy and others would take legal action against them.

6. The first respondent would further submit that the said complaint was forwarded to the Station House Officer, J3, Guindy Police Station and thereafter to the first respondent. Pursuant to the said complaint, the first respondent called the persons concerned for enquiry on 27.4.2003 and this respondent is given to understand that on 27.4.2 003 itself, the parties to the complaints, the petitioner and his son came to a settlement and thereafter the petitioner herein had given a written undertaking that he would honour the cheques issued to the complainants therein; that on receipt of the cheques from the petitioner, the complainants requested the first respondent not to proceed further on the complaint preferred by them; that it is respectfully submitted that the son of the petitioner viz. Kannan was arrested on 7.7.2003 and produced before the IX Metropolitan Magistrate, Saidapet, Chennai, pursuant to the execution of non-bailable warrant for the offence punishable under Section 138 of the Negotiable Instruments Act; that now the petitioner has not come forward to file this petition with clean hands and the very idea of the petitioner is to protect his son from the clutches of law; that his son cheated four persons under the guise of procuring job in the Government Departments. On such averments, the first respondent would seek to dismiss the above Criminal original petition.

7. The second respondent, adhering the counter affidavit filed by the first respondent and adopting the same line, would file his counter affidavit also, ultimately praying to dismiss the petition.

8. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel representing the petitioner and the respondents as well, what could be assessed is that the petitioner, who is a retired Engineer from PWD, a senior citizen and an alleged heart-patient, has come forward to file the above petition praying to collect the cheque leaves and the documents, which were forcibly obtained from him by the first respondent, keeping him in the Police Station on 27.4.2003 under coercion and threat, and handed over to the second respondent and for such other orders on grounds such as that for some commitments that the son of the petitioner viz. Kannan had with the complainants one Vinayagamoorthy and 3 others promising to get them job from the Government office, he had obtained a sum of Rs.5,19,000/- and without being able to secure the job as promised by the said Kannan, a complaint had been forwarded to the Station House officer to recover the said amount from him. However the first respondent herein, instead of initiating proper action against the erring person, the petitioner's son viz. Kannan, joining hands with the second respondent, has taken the petitioner to the Guindy Police Station and forcibly obtained five cheques, morefully described supra for a total sum of Rs.4,94,000/- from the petitioner, who has nothing to do with the dealings of the complainants with his son Kannan. But without even minding

that the petitioner is a senior citizen and an ailing person, the respondents have caused such mental agony and affliction to him, besides extracting the cheques and documents forcibly from him, just for the simple reason that he is the father of the said Kannan, and therefore left with no way out, the petitioner has resorted to this Court for getting back all those materials obtained forcibly by the first respondent keeping him in the police station and putting him under such threat and coercion.

9. A careful study held in the petition and the counter affidavits filed by both the respondents 1 & 2 separately would clearly reveal the true nature of the above petition and in fact, it is the admitted case of the first and second respondents that the petitioner was taken to the Police Station and keeping him in the Police Station in the presence of the first respondent, the materials have been extracted from him, thus adhering the case of the petitioner with such minute particulars such as how on the particular date the cheques and documents have been forcibly extracted from the petitioner and correlating all other material particulars thus sailing along with the averments of the petition filed by the petitioner in the above Criminal Original petition.

10. Though it is alleged on the part of both the respondents that the complaint was lodged before the City Commissioner of Police and the same having been forwarded through the Deputy Commissioner to the first respondent, the first respondent is said to have acted in the manner alleged by the petitioner. It has to be ascertained as to whether the said complaint was against the petitioner and whether any recommendations were made by the Commissioner and the Deputy Commissioner, while forwarding the same to the first respondent, who forcibly took the petitioner, who has nothing to do with the offence alleged, to the police station admittedly by the second respondent and has forcibly obtained the cheques and other documents from him under coercion and threat keeping him in the Police Station. If for not yielding to such pressure, the first respondent should have done the said criminal act for corrupt reasons joining hands with the second respondent.

11. The only point that the first respondent would allege deviating from the complaint is that at the time when the above cheques and documents were extracted from the petitioner in the first respondent's police station, the petitioner's son was also present. It is also the case of the first respondent that all these drama had been enacted only in his presence, but not an iota of averment is there in both the counter affidavits filed by the first and second respondents to the effect that whether the complaint alleged to have been forwarded to the first respondent was preferred against the petitioner and on what allegations etc.

12. It could be seen that there is no denial of the fact of extracting five cheques and some other documents as aforementioned in the first respondent police station in his presence and there is absolutely no denial of all the allegations and the only difference between the above Criminal original petition filed by the petitioner and the counter affidavits

filed separately by the first and second respondents is that they would allege that there was no coercion or threat and as though the petitioner volunteered to give and deliver those items in the Police station which is not at all the case of the petitioner and therefore, easy conclusions could be arrived at by this court that for the alleged parting of the money in favour of the petitioner's son for securing some job with which, neither the first respondent nor the second respondent connect the petitioner in any manner and therefore, there is no reason on the part of the petitioner to volunteer to go to the police station and issue the cheques and deliver the documents on those allegations filed against the petitioner is unreasonable. The petitioner has been forcibly taken to the police station and the first respondent, by misuse of his powers as a police officer, for corrupt reasons, has extracted keeping the petitioner under his illegal custody at the police station and by coercion and threat of registering cases against him and pushing him behind the bars.

13. In these circumstances, the only conclusion that this Court could arrive at is that the first respondent Inspector of Police, joining hands with the second respondent and his associates, who are admittedly parties to the crime in cheating the Government in procuring job for money with the help of men like the said Kannan, who is alleged to be a drop-out from home. For corrupt reasons, the first respondent, throwing to winds, his duties and responsibilities and the dignity attached to the office, particularly since he belongs to the disciplined force, has indulged in criminal offences such as torturing innocent people like the petitioner, and helping criminals like the second respondent and his associates, misusing the powers conferred on him for lawful exercise, which would only give way to invoke the disciplinary rules and the relevant provisions of criminal law, both for the acts openly perpetrated under cover of threat, misuse of power as a police officer and for extracting the items mentioned from the petitioner by unlawful means and ways without the petitioner having had any participation in the alleged deal of the second respondent with his son, that is said to have occurred in the year 1999. The second respondent, besides admitting that he was a party to cheat the Government by procuring job for money, has initiated all the measures and instigated the first respondent to indulge in the said criminal act and was part and parcel of the criminal offence acting hand in glove with the first respondent and thereby perpetrating the criminal offence and thereby both the respondents become liable to be prosecuted and punished, besides the cheques and documents wrongfully and illegally extracted, being seized immediately from the hands of the second respondent so as to mark them as case properties and ultimately to be returned in favour of the petitioner.

14. Since the first respondent is said to have indulged in such criminal activities against the petitioner only for corrupt reasons and for gratification, it is relevant to direct the Commissioner of Police, Chennai, to refer the matter to the proper authority to register a case under the relevant provisions of the Prevention of Corruption Act, 1988 and to investigate into the same, besides proceeding against him departmentally in the manner required under the disciplinary law of the department.

In result,
(i) the above criminal original petition is allowed;

(ii) the first respondent is hereby directed to collect from the second respondent all the five cheque leaves of the State Bank of India, Ashok Nagar Branch dated 16.7.2003, 16.8.2003, 16.9.2003, 16.10.20 03 and 16.11.2003 and the deed of undertaking, which were extracted from the petitioner illegally, and return the same to the petitioner himself, within fifteen days from the date of receipt of a copy of this order, since he was responsible, by misuse of his authority, to extract them from the petitioner so as to be handed over to the second respondent;

(iii) the Commissioner of Police, Chennai, shall also initiate the disciplinary proceeding against the first respondent, Inspector of Police, who was in charge of the Office at the relevant time, for having misused his lawful powers and indulged in such illegal acts of extracting valuable security such as cheques and the deed of undertaking and helped the criminals like the second respondent, for corrupt reasons and punish him in accordance with the disciplinary rules for violation of the Code of Conduct, besides referring the matter to the Special Wing for registering the case under the Prevention of Corruption Act, 1988;

(iv) the Commissioner of Police, Chennai, is further directed to register proper criminal cases against the second respondent for having admittedly indulged in illegal activities, joining hands with the said Kannan, whereby the second respondent has not only been instrumental, but also acting in connivance with the said Kannan admittedly attempted to cheat the government departments as a party to the offence alleged to have been perpetrated by the said Kannan, regarding which, already a case is alleged to have been registered, including for being instrumental for extracting the cheques and the deed of undertaking from the petitioner, misusing the first respondent, to achieve his illegal designs and perpetrating such offences as brought forth supra;

(v) the Commissioner of Police, Chennai, shall entrust these cases with such independent Officers of proven integrity and outstanding ability to register criminal cases and to have a free and fair investigation in both the above cases so as to file the final report at the earliest.

vjy/gs.

Index:Yes.
Internet:Yes.

To
1.The Commissioner of Police,
Chennai.

2.The Inspector of Police,
Guindy Police Station,
Guindy,

Chennai.